In the High Court of Judicature at Madras

Dated: 28/10/2003

Coram

The Hon'ble Mr. Justice R. Jayasimha Babu
and
The Hon'ble Mr. Justice S.K. Krishnan

Writ Appeal No. 676 of 1990

1. V. Subramanian
2. R. Krishnamurthi
3. P. Janardanan
4. N. Neelakantan (died)
5. V.R. Jayachandran
6. T.B. Ramadoss Rao
7. P. Surendra Babu
8. K. Gnanaprakasam
9. A. Mohanraj
10.R. Stanley
11.K. Adikesavan (died)
12.N. Kausalya
13.N. Ram Mohan
14.N. Swetha Devi
15.A. Hemavathi
16.A. Renukadevi ..... Appellants

(* Appellants 12 to 14 are impleaded as Lrs of the deceased 4th appellant and appellants 15 and 16 are impleaded as Lrs of the deceased 11th appellant as per order of Court dated 22.10.2003 made in W.A. M.P. No: 779 and 780 of 2003)

-Vs-

1. The State of Tamil Nadu,
rep. by Secretary,
Education Department,
Fort St. George,
Madras - 9.

2. The Registrar,
Perarignar Anna University
of Technology,
Madras - 600 025.

3. The Registrar,
University of Madras,
Chepauk,
Madras - 5. ..... Respondents

Appeal under Clause 15 of the Letters Patent against the order of a learned single Judge of this Court dated 17.8.1987 made in W.P. No: 1 281 of 1981.

!For appellants : Mr.T.L. Ram Mohan,
Senior Counsel for
Mr.R. Balasubramaniam

^For 1st respondent : Mrs.N.G. Kalaiselvi,
Spl. Government Pleader

For 2nd respt. : Mr. P. Subbiah for
M/s. Row & Reddy.

For 3rd respt. : Mr.N.R. Chandran,
Senior Counsel for
Mr. N. Rajan

:J U D G M E N T

(Judgment of the Court was
delivered by R. Jayasimha Babu, J.)

The Anna University was constituted by an Act of the Legislature of the State of Tamil Nadu by Tamil Nadu Act 30 of 1978. That Act was Gazetted on 24th July, 1978. By Section 36 of that Act, the services of the employees in the institutions and departments mentioned in Schedule-I to that Act were transferred to the new University provided such employees consented for such transfer. By a retrospective amendment to that Act effected by Act 44 of 1979, the consent was dispensed with in respect of persons who were not Government employees. Schedule-I reads as under :
" SCHEDULE I
[See sections 2 (b) and 3 (3)]
I. The following Departments of the University of Madras, located in the Alagappa Chettiar College of Technology, Guindy, Madras, namely :-
(1) Chemical Technology ;
(2) Leather Technology ;
(3) Textile Technology ;
(4) The School of Architecture and Town Planning.
II. The Madras Institute of Technology, Chrompet,Madras."

2. The services of the appellants herein, who were ministerial employees of the Madras University when this Act came into force were transferred to the new University along with the services of eleven other

ministerial staff. The other eleven did not question their transfer. The appellants filed the writ petition from which this appeal has arisen, in February 1981, nearly two years after their transfer to Anna University. The petition was filed by them after the President of the Union which they had formed after their transfer to Anna University, namely Anna University Non-teaching Staff Union, one Era Ganesan who held the office of the President of that Union despite being a lecturer in one of the transferred colleges, had been dismissed by this Court. That writ petition which had been filed by him in the year 1979 was dismissed by a learned single Judge of this Court in the year 1980.

3. Nearly twenty five years have passed since the University was formed. Out of the original eleven who filed the writ petition, two have died and most of others have retired and only three of the original petitioners are now in service and they are also about to reach the age of retirement within the next year or two.

4. The grievance of the appellants is that despite their wanting to remain in the Madras University, they had been compelled to become employees of the Anna University and such compulsion which was incorporated in Section 36 of the Act 30 of 1978, after it was amended by Act 44 of 1979, was per se illegal and unconstitutional. It was also their case that they were not employees of any of the departments or institutions mentioned in schedule-I of the Act, and, therefore, the Act, more particularly, Section 36 had no application to their cases.

5. The specific case pleaded by them in their affidavit was that they had been employed in the Central Office of the Madras University, part of which was located in the Alagappa Chettiar College of Technology (A.C.T.) and

that they were not working in any of the transferred departments. That case was refuted by the University. It was the stand of the University that they were, in fact, working in the transferred departments.

6. When the writ petition was taken up for hearing on 17.08.1987 by the learned single Judge a submission had been made by their counsel that the case of the petitioners was covered by the judgment that had been rendered in the case of Era Ganesan, which judgment had been confirmed by the Division Bench in Writ Appeal No: 739 of 1980 decided on 30.06.1987. The learned Judge while dismissing the writ petition has, after referring to the judgment in Era Ganesan's case, observed that, " On going through the said Judgment, I find that the submission is correct."

7. The appellants, thereafter, filed the present writ appeal. This writ appeal was earlier heard by a Division Bench consisting of Anand, C.J. and Raju, J. as they then were. The Division Bench dismissed the appeal observing that,

" Since the learned single Judge had perused the judgment in the writ appeal and noticed that the law laid down therein was applicable to the case of the writ petitioners, and nothing has been brought to our notice from which a

contrary view can be taken, we see no reason to interfere with the judgment under appeal".

8. That judgment of the Division Bench was taken up in appeal to the Hon'ble Supreme Court. The Supreme Court having granted leave, the Civil Appeal arising from that Special Leave Petition was heard and disposed of by the Court on the 10th October 2002. The Court, set aside the judgment of the Division Bench and remanded the matter to the High Court for a re-determination of the appeal on merits.

9. After the appeal was remanded, further pleadings were filed by the parties and several documents including the service registers were placed before the Court, the Supreme Court having given liberty to the parties to file additional pleadings before the High Court.

10. The appellants' case was elaborately argued before us by counsel for the parties. We granted time to the parties on several occasions to file their affidavits and supplementary affidavits and produce documents on which they wished to rely.

11. Mr. Ram Mohan, learned Senior Counsel for the appellants submitted that the appellants of whom only three are still in service, were employed in the Central Office located in the Alagappa Chettiar College of Technology (ACT); that central office catered to the needs of not only the transferred departments but also to numerous other departments of the University; that they were not employees of any one of the departments that were transferred; and therefore, the Act had no application to their cases. It was his alternate submission that in the event they were found to be in fact employees of the transferred departments, the provision providing for their statutory transfer was unconstitutional, and was liable to be struck down as under the General Law of Master and Servants, no servant can be transferred like a chattel by one master to another and any law providing for such transfer would offend Article 14 of the Constitution.

12. His further submission was that there was discrimination even within the statute in as much as consent was required of persons who were Government employees while such consent had been dispensed with in respect of persons who are not Government employees.

13. The learned Advocate General who appeared for the Madras University submitted that the appellants were very much employed in the departments that were transferred, that their transfer is in accordance with law; that the statutory provision permitting such transfer is perfectly constitutional; and that the appellants are also estopped from setting up the case which they have pleaded by their conduct in having accepted the employment in the new University, having worked there for nearly two years before coming to this Court, and, thereafter continuing to work there till retirement as has happened in the case of most of them. The other three who have not retired are due to retire within the next two years.

14. In support of the case pleaded by the University, the University

has placed before us a publication issued by the University of Madras in the year 1969. It is titled "List of Officers and Servants". In that printed publication, several departments or wings of the University in which the University had employed officers and servants are listed in the table of contents. That listing refers inter alia, to "A.C. College of Technology (Chemical Engineering) and A.C. College of Technology (Textile Technology)". The officers and servants employed in those departments are set out at pages 62 and 80 respectively. Among other departments listed independently are School of Architecture and Town Planning, Bio-Chemistry Department, Analytical Chemistry Department, In-organic Chemistry Department, Physical Chemistry Department, Organic Chemistry Department, Geology and Geophysics Department, Botany Department, etc. In the same book, there is a section which sets out seniority, scales of pay for the university officers, their designation, etc. Of different departments of the university.

15. It is evident from that listing as also from some of the letters on the letter head of Alagappa Chettiar College of Technology produced by the appellants that ACT was a distinct larger department, in which were housed the Chemical Engineering and Textile Technology departments, and that the campus in which the A.C.T. College was located was also known by the same name of ACT and that the other departments located in that campus such as school of Architecture and Town Planning, physical, chemical, bio-chemistry, etc. were not part of the ACT but were distinct departments located in the campus of the ACT. Those departments were housed in the campus known by the name of the college.

16. The names of four of the appellants are found in that book as part of the staff employed in the departments on Chemical Engineering and Textile Technology. They are Sriyuts S.Janardhanan, Stanley, Neelakandan and Suresh Babu. Their claim that they were not employed in the Chemical Engineering Department or Textile Engineering Department of ACT is clearly a false plea and is liable to be rejected.

17. So far as others are concerned, the Registrar of the University has filed more than one affidavit giving the details of their service gathered from their service records. Those service records which were also placed before us clearly show that they had been transferred to the Central Office of ACT. They were under the control of the Director of the ACT. The Director had, under his control, the employees of the two departments namely Chemical Engineering and Textile Technology. Certain limited facilities such as stores appear to have been common to this college and to some other departments. That however, does not establish the case sought to be pleaded by the appellants that the central office located in the A.C.T. was an office which was required to cater to all the departments in the campus and was not an office meant for the transferred departments. It is the definite stand of the University that these persons were serving in the A.C.T. College for periods ranging from two to twelve years prior to the enactment of the Anna University Act. What has been stated by the Registrar in his affidavit is borne out by the service records which were produced before us.

18. We, therefore, do not find any substance in the claim made by the

appellants that they were not working in any of the departments that were transferred to the Anna University and on that score, the Act has no application to their cases.

19. Once this finding is reached, the submission that had been made by their counsel before the learned single Judge that their case is covered by the decision that had been rendered in the case of Era Ganesan, is found to be a perfectly proper and correct submission. The observations made by the

earlier Division Bench that they were not shown any material to differ from the conclusion that had been reached by the learned single Judge is now found to be the only conclusion that could have been reached.

20. In the judgment delivered by the Division Bench of this Court on 30.06.1987 in W.A. No: 739 of 1980, in the case of Era Ganesan it has been observed inter alia thus,

"However it is to be seen that the Alagappa Chettiar College of Technology is the only Engineering College attached to the Madras University and that having been transferred to the Anna University, which transfer is not questioned, there can be no doubt that there is no post as Lecturer or Professor of Alagappa Chettiar College of Technology in Madras University, in which the petitioner could function as such Lecturer. This is a case of the post being abolished, which gives no constitutional or other right to the person who held the same. ..... In those circumstances, there is no question of the petitioner claiming that any of his service conditions have been affected by the constitution of the Anna University Act or the abolition of the post of Lecturer attached to the Madras University in Alagappa Chettiar College of Technology. If the Tamil Nadu Legislature has the legislative competence to pass the Perarignar Anna University Act, 1979, there can be no doubt that provision of Section 36 taking over all the employees of the erstwhile institution which formed part of Anna University now, are valid and within the legislative competence."

21. Those observations are equally applicable to the appellants herein. When the department of Chemical Engineering and Textile Technology which were the departments constituting the ACT were transferred to the new University, all the posts in those departments ceased to exist in the Madras University and became available only in the Anna University. Had the employees not been made employees of the new University, they would have suffered loss of their employment as their earlier master no longer had with it the posts in which it could continue to utilise their services. The provision for transfer thus protected the employment of the appellants and of other persons similarly situate.

22. The learned senior counsel for the appellants submitted that the appellants have a right to challenge the provision of the Act notwithstanding the fact that they had served under their new employer for almost two years before they came to this Court. Counsel placed strong reliance upon the decision of the Two Judge Bench of the Supreme Court in the case of Jawaharlal Nehru University vs. Dr.K.S. Jawatkar and others [1989 Supplementary (1)

S.C.C. 679] in support of his submission that there can be no transfer under compulsion. At paragraph 7 of that judgment it has been held that consent for transfer could be either express or implied.

23. If consent can be implied, then the conduct of the appellants in having served under their new employer for almost two years and while in such service having formed a new union namely Anna University Non-teaching Staff Association, whose object is to protect the interest of non-teaching staff of the new University, would clearly indicate an implied consent on the part of the appellants to serve the Anna University. Such implied consent cannot be revoked at the will and pleasure of the appellants. The fact that the writ petition was filed in this Court about two years after they became employees of the Anna University cannot be construed as amounting to revocation of the consent which had impliedly been given by them.

24. In the case of Jawaharlal Nehru University the validity of a resolution passed by the Syndicate of that University was in issue. The Court held that, that resolution by itself cannot deprive the concerned teacher of his status as an employee of that University and make him an employee of the newly created Manipur University. The Court, in the course of the judgment observed that,

"There is also no doubt that his employment could not be transferred by the appellant University to the Manipur University without his consent, notwithstanding any statutory provision to that effect whether in the Manipur University Act or elsewhere." and that

" The position in law is clear, that no employee can be transferred, without his consent, from one employer to another. The consent may be express or implied. We do not find it necessary to refer to any case law in support of this conclusion."

25. Another two Judge Bench of the Supreme Court in the case of J. G. Dholkia v. Scindia Steam Navigation, AIR 1961 SC 627, had while considering the effect of Section 20(1) of the Air Corporations Act, (Act 27 of 1953) by which the Air companies then existing in the country were nationalised, at paragraph 10 of the judgment referred to the English case of Nokes v. Doncaster Amalgamated Collieries Ltd. , 1940 AC 1014, wherein it had been observed "It is, of course, indisputable that (apart from statutory provision to the contrary) the benefit of a contract entered into by A to render personal service to X cannot be transferred by X to Y without A□s consent, ..." and held that, "This observation itself shows that a contract of service may be transferred by a statutory provision....."

26. Dealing with Section 20(1) of the Air Corporations Act, 1953, the Court observed, "Section 20(1) lays down that every officer or employee of the "existing air companies" employed by them prior to the first day of July 1952 and still in their employment immediately before the appointed day shall

become as from the appointed day an officer or employee, as the case may be, of the Corporation in which the undertakings are vested. The object of this provision was to ensure continuity of service to the employees of the "existing air companies" which were being taken over by the Corporation and was thus for the benefit of the officers and employees concerned. It is further provided in Section 20(1) that the terms of service etc. would be the same until they are duly altered by the Corporation. One should have thought that the employees of the air companies would welcome this provision as it ensured them continuity of service on the same terms till they were duly altered. Further there was no comp ulsion on the employees or the officers of the "existing air companies" to serve the Corporation if they did not want to do so. The proviso laid down that any officer or other employee who did not want to go into the service of the Corporation could get out of service by notice in writing given to the Corporation before the date fixed, which was in this case July 10, 1953...."

27. Yet another two Judge Bench in the case of The Manager P.K.P. Bidi Factory vs. O.L.Thenge, AIR 1970 SC 823, distinguished the case of Scindia, by observing that that was a case of employees "becoming the employees of the Corporation by virtue of operation of a statute".

28. Statutory transfers of employees have been effected by Parliament and State legislatures under numerous Nationalisation Acts, nationaling Banking, Insurance and Industrial undertakings. The statutory provision for transfer under such Acts have not been regarded as unconstitutional.

29. The Industrial Disputes Act in Section 25FF denies any compensation to workmen in case of transfer of undertaking, if their employment is not interrupted by reason of the transfer, continuity of service with benefit of past service is protected, and the terms and conditions of service under the new employer is not in any way less favourable than those applicable immediately before the transfer.
30. It is, therefore, not possible to agree with the submission that Section 36 of the Anna University Act is unconstitutional on the sole ground that transfer of the employee is effected by that provision without his consent. Moreover, as noticed in the order of remand made by the Supreme Court:

" It may, however, be noted that in terms of Sec. 36 (4) (b) an option of sorts had been given to the employee either to continue in employment with Anna University or to terminate his employment with compensation equivalent to three months remuneration."

31. The statute, therefore, gives the option to the employee either to accept the employment under the Anna University or not to accept it. In the event of his not accepting, it also provides for compensation equivalent to three months remuneration. The employee thus, is not under compulsion to serve a new master. He can very well refuse to do so and opt for receiving compensation. He, however, cannot claim, a right to remain with his previous employer as the post that was available under the previous employer ceased to

exist after the transfer of that post to the new University.

32. The statutory transfer is a valid transfer. The provision in the statute providing for transfer of employees from one Master to another does not become unconstitutional on account of the general law of Master and Servant not recognising such a right in Master to transfer his employees to another Master. The general law can be modified by statute. The law however cannot compel a man to serve anyone against his will. It is open to the transferred employees, if they are not willing to serve under the new Master, not to do so.

33. In so far as the alleged discrimination as between the government servants and University employees, government servants, whose employment is one of status rather than one under contract, form a separate and distinct class. As the government has numerous departments, depending upon the nature of the post in which the employee was serving, the redeployment of such a person in other wings of the Government being a possibility, by providing that they will have option either to remain as Government servants or become employees of Anna University, it cannot be said that the statute has treated in a hostile manner employees of the Madras University as also of the private institution which was transferred to the Anna University under the provisions of the Act.

34. Having regard to what has been set out in the foregoing paragraphs, the writ appeal fails and it is dismissed.

Index : Yes
Website : Yes

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To,

1. The State of Tamil Nadu,
rep. by Secretary,
Education Department,
Fort St. George,
Madras - 9.

2. The Registrar,
Perarignar Anna University
of Technology,
Madras - 600 025.

3. The Registrar,
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